2997

Office Supreme Court U.S.
FILED
MAR 24 1902
JAMES H. MCKENNEY,
Clerk.

1 Sup. Ct. 273

Brief of Hayden for Appellee (on motion)

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Mar. 24, 1902.

THE UNITED STATES, CLAIMANT OF THE SPANISH CRUISER "INFANTA MARIA TERESA," ETC.,

APPELLANT,

vs.

WILLIAM T. SAMPSON, REAR ADMIRAL, ETC.

No. 597.

MOTION TO DISMISS THE APPEAL, NOTICE OF MOTION. ADMISSION OF SERVICE.

BRIEF ON THE MOTION.

McCAMMON & HAYDEN,
Proctors for the Appellee.

JAMES H. HAYDEN,
Advocate.

WASHINGTON, D. C.
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1902.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

THE UNITED STATES, CLAIMANT OF THE SPANISH CRUISER "INFANTA MARIA TERESA," ETC., APPELLANT,
v.
WILLIAM T. SAMPSON, REAR ADMIRAL, ETC.
No. 597.

MOTION TO DISMISS THE APPEAL.

Now comes the appellee and moves the court to dismiss the appeal herein, for that this court is without jurisdiction to hear the same.

McCAMMON & HAYDEN,
Proctors for the Appellee.

NOTICE OF MOTION.

SIR: Please take notice that on Monday, March 24, 1902, at 12 o'clock noon, or as soon thereafter as counsel can be heard, we shall call up the foregoing motion and submit the same for the judgment of the Supreme Court of the United States thereon.

McCAMMON & HAYDEN,
Proctors for the Appellee.

CHARLES C. BINNEY, ESQ.,
Special Attorney for the United States.

ADMISSION OF SERVICE.

Due service of the foregoing notice and motion is admitted this 20th day of March, 1902.

CHARLES C. BINNEY,
Special Attorney for the United States.

BRIEF ON THE MOTION.

This motion is filed at the request of counsel for the United States (appellant). Various proceedings had in the cause at the instance of the United States make it necessary for the appellee to take some such action in order to prevent a duplication of hearings and unnecessary delay.

But we believe that the appeal has been properly taken and that this motion should be denied.

The appeal runs from a decree of Mr. Justice Bradley of the Supreme Court of the District of Columbia holding a special term. The cause is one in prize. The question at issue was whether the Spanish cruiser "*Infanta Maria Teresa*" and certain guns and munitions of war, captured in the naval engagement between fleets of the United States and of Spain, which was fought off Santiago, on July 3, 1898, were condemnable as prize. The libel was filed by Rear Admiral Sampson, commander-in-chief of the American fleet, acting in his own behalf and in the behalf of the officers and enlisted men of the Navy, who, serving under him, took part in the captures. After the preliminary proceedings, prescribed by law (*R. S. U. S. Sec.* 4625), the United States and the Secretary of the Navy appeared and filed answers, wherein they claimed that the "*Infanta Maria Teresa*" and other property

described in the libel, were not captured under circumstances which warranted their condemnation as prize. Proofs were taken on behalf of all parties. The cause came on for hearing and was submitted on briefs and oral arguments. By the decree it was adjudged that the vessel and other property claimed as prize, be condemned, as such.

Counsel for the United States, entertaining doubt with regard to the appellate jurisdiction in such a case, noted two appeals, one to this court, the other to the Court of Appeals of the District of Columbia. The latter appeal was perfected by the United States and docketed in the Court of Appeals. In behalf of the appellee (libellant) we moved that court to dismiss the appeal for want of jurisdiction, contending that the decree could be reviewed in no way except by a direct appeal to this court. After hearing the Court of Appeals handed down a decision in which it held that the appeal was improvidently taken and should be dismissed, but left it optional with the United States to determine whether an order of dismissal should be entered forthwith or not. The United States asked that no order be entered pending the determination of an appeal which it intended to take from the decree of the district court to this court. The United States being unwilling to bring up and print the whole record until the question of jurisdiction has been decided has filed here a diminished record, containing nothing but the pleadings and the decree of condemnation.

While this is probably sufficient for the purpose contemplated, it certainly would not serve for any other. Hence the appellant's request that we file this motion.

There was no question raised with respect to the jurisdiction of the court below. Sec. 762, R. S. D. C., provides:

> "Any one of the justices (Supreme Court of the District of Columbia) may hold a special term with the same powers and jurisdiction possessed and exercised by district courts of the United States."

The district courts of the United States have exclusive original jurisdiction in prize cases (*Act of September* 24, 1789, 1 *Stat. L.* 84; *The "Paquette Habana,"* 175 *U. S.* 677, 685.)

In many instances a justice of the court below holding a special term, has heard and determined causes in prize. In none of these has the jurisdiction of the court been questioned. (*The "Metropolis,"* 7 *D. C.* 100; *In re Farragut*, 7 *D. C.* 94; *The "Tropic Wind,"* 6 *D. C.* 351; *The "Albemarle," Special Term, District Court, D. C. No.* 146.)

The difficulties experienced by counsel for the United States in deciding where to take the case on appeal grew out of their belief that the act of March 3, 1891, entitled "An Act to establish Circuit Courts of Appeals and to define and regulate, in certain cases, the jurisdiction of the courts of the United States, and for other purposes," and the act of February 9, 1893, entitled "An Act to establish a Court of Appeals for the District of Columbia, and for other purposes," while both applicable to such an appeal as this, were repugnant, and that the later act probably superseded the earlier.

The act of 1891 provides (26 *Stat. L.* 826, 827):

> "Sec. 4. That no appeal, whether by writ or error or otherwise, shall hereafter be taken or allowed from any district court to the existing circuit courts, and no appellate jurisdiction shall hereafter be exercised or allowed by said existing circuit courts, or of appeals, by writ of error otherwise from said district courts, shall only be subject to review in the Supreme Court of the United States, or in the Circuit Court

of Appeals, hereby established as is hereafter provided, and the review by appeal, by writ of error, or otherwise from the existing circuit courts, shall be had only in the Supreme Court of the United States, or in the Circuit Court of Appeals, hereby established according to the provisions of this act regulating the same."

"Sec. 5. That appeals or writs of error may be taken from the district court, or from the existing circuit court, direct to the Supreme Court in the following cases.

* * * * * * *

"From the final sentences and decrees in prize cases."

* * * * * * *

The act of 1893 provides (27 Stat. L. 434):

"Sec. 7. That any party aggrieved by any final order, judgment, or decree of the Supreme Court of the District of Columbia, or of any justice thereof, may appeal therefrom to the Court of Appeals hereby created, and upon such appeal the Court of Appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just."

If there were no other legislation upon the subject either of these acts standing by itself would probably determine the question. But we have seen that the court below was not exercising jurisdiction peculiarly its own, but jurisdiction belonging exclusively to district courts of the United States, and it was, for the time being, a district court, for the character of a court is to be determined by the jurisdiction which it is authorized to and does exercise. (*In re Cooper*, 143 *U. S.* 472, 494, 512; *Durrousseau* v. *U. S.*, 6 *Cranch*, 307.)

Though the terms of the act of 1893 (Sec. 7) are sufficiently broad to cover any decree entered by a justice

of the Supreme Court of the District of Columbia, it must not be forgotten that the act of 1891 and earlier laws which deal with the adjudication of prizes have always treated such cases as constituting a distinct class, and the provisions with regard to them have been and are in many respects, essentially different, from those governing cases of a less unusual nature. The act of 1893 contains no specific provision with respect to prize cases, and none which can be construed as a repeal of Sec. 5 of the act of 1891. There is no reason to suppose that Congress intended, by the act of 1893, to provide that prize cases, heard in the first instance by a justice of the Supreme Court of the District of Columbia, sitting as a district court, should be treated in a manner different from similar cases heard in any other prize court.

Under the circumstances, it is competent to inquire whether the intent of Congress, to be gathered from the several statutes, can be better effectuated by following the procedure prescribed by the act of 1891, or that prescribed by the act of 1893. By adhering to the procedure laid down by the former act, the decree in question would be treated as a final decree in prize, which it is. For the purpose of this and like cases, the court below would be treated as a district court of the United States, which, in effect, it was. The delay and expense incident to an intermediate appeal, which it was the intention of Congress to prevent in such cases, would be avoided.

In the case of the "*Paquette Habana*" (175 U. S. 677, 685-686), it was argued that the Supreme Court did not possess jurisdiction to hear the case on appeal, because the value of the prize did not exceed two thousand dollars, which had been fixed as the jurisdictional limit in prize cases for purposes of appeal (*R. S. U. S., Sec.* 695). Mr. Justice Gray, delivering the opinion, said:

> "We are of the opinion that the act of 1891, upon its face, read in the light of settled rules of statutory construction and the decisions of this court, clearly manifests the intention of Congress to cover the whole subject of the appellate jurisdiction from the District and Circuit Courts of the United States, so far as regards in what cases as well as to what courts appeals may be taken, and to supersede and repeal, to this extent, all provisions of earlier acts of Congress, including those that imposed pecuniary limits upon such jurisdiction, and as a part of the new scheme, to confer upon this court jurisdiction of appeals from all final sentences and decrees in prize cases, without regard to the amount in dispute."

In the case at bar, as in all prize cases, the value of the property involved is not stated in the libel, nor is it fixed by the decree of condemnation. The value of it is still at issue in the cause, upon which a hearing and decision will not be had until the question of "prize or no prize" has been finally adjudicated. By following the procedure laid down in the act of 1891 the right of appeal to this court would be preserved.

It is true that a number of cases which grew out of captures made during the civil war were heard in the first instance by a justice of the court below holding a special term, and thereafter were heard on appeal by the general term of that court, before appeals were taken to this court, but this was prior to the passage of the act of 1891, of which Mr. Justice Gray said ("*Paquette Habana*," *supra*):

> "But all this (the former scheme of appellate jurisdiction) has been changed by the act of March 3, 1891, establishing the circuit courts of appeals and creating a new and complete scheme of appellate jurisdiction, depending upon the nature of the different cases, rather than on the pecuniary amount involved."

If Congress intended that the appellate jurisdiction of any case should be determined by its subject-matter alone there is no reason to suppose that pecuniary limitations were abolished, while other provisions of law affecting the question were permitted to remain in force.

To hold that a direct appeal to this court can be taken from the present decree, would not imply that a direct appeal must be taken from every decree of a justice of the Supreme Court of the District of Columbia holding a special term, which belongs to one of the classes enumerated in Sec. 5 of the act of 1891. For instance, take "convictions of capital or otherwise infamous crimes," one class of cases wherein appeals must be taken from a district court to this court direct. In such a case a justice of the court below when pronouncing a sentence would not exercise the jurisdiction of a district or circuit court of the United States, but one branch of the jurisdiction, specially conferred upon the Supreme Court of the District of Columbia (Sec. 763, R. S. D. C.).

In admiralty cases, in general, the manner of appeal would not be affected. To be sure, the Supreme Court of the District of Columbia in adjudicating these, does exercise the original jurisdiction conferred upon the district courts of the United States, but under the act of 1891 appeals in such cases must be taken from the district courts to the Circuit Courts of Appeals. The Court of Appeals of the District of Columbia bears the same relation to the Supreme Court of the District of Columbia that the Circuit Courts of Appeals do to the district courts of the United States. Hence the appeal from the Supreme Court to the Court of Appeals of the District of Columbia, would conform to the practice generally followed throughout the country.

Now, let us consider the result of adopting the pro-

cedure laid down in the act of 1893. This would ignore the intent of Congress to regulate appeals according to their subject-matter, irrespective of other conditions. The right of appeal to the Supreme Court would be subject to the pecuniary limitation prescribed by the eighth section of the act, which provides:

> "Sec. 8. That any final judgment or decree of the said Court of Appeals may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal in all cases in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars." * * *

In this case, where the matter in dispute has no definite and fixed value, this pecuniary limitation would prevent an appeal to this court, if an appeal to the Court of Appeals were proper.

McCAMMON & HAYDEN,
Proctors for Libellant.

JAMES H. HAYDEN,
Advocate.